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SUBJECT: COMMUNICATION FROM SRS ON ESA EXECUTIONS REGARDING
AN MNF RAID IN IRAQ ON MARCH 15, 2006

1. Mission received a communication from Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, regarding a raid conducted by Multinational Forces on March 15, 2006 at the house of Faiz Harrat Al-Majma'ee in Iraq. This communication has been sent via e-mail to IO/RHS. This communication is number 8 on the Geneva 2006 Communications Log.

2. Begin text of letter:

27 March 2006

REFERENCE: AL G/SO 214 (33-23) USA 6/2006

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary and arbitrary executions pursuant to Commission on Human Rights resolution 2004/37.

I would like to draw the attention of your Government to information I have received regarding a raid conducted by the Multinational Forces (MNF) on 15 March 2006 in the house of Faiz Harrat Al-Majma'ee, a farmer living in the outskirts of Al-Iss Haqi District in Balad (Salah-El-Din Governorate).

I have received various reports indicating that at least 10 persons, namely Mr. Faiz Hratt Khalaf, (aged 28), his wife Sumay'ya Abdul Razzaq Khuthur (aged 24), their three

children Hawra'a (aged 5) Aisha (aged 3) and Husam (5 months old), Faiz's mother Ms. Turkiya Majeed Ali (aged 74), Faiz's sister (name unknown), Faiz's nieces Asma'a Yousif Ma'arouf (aged 5 years old), and Usama Yousif Ma'arouf (aged 3 years), and a visiting relative Ms. Iqtisad Hameed Mehdi (aged 23) were killed during the raid.

According to the information received, American troops approached Mr. Faiz's home in the early hours of 15 March 2006. It would appear that when the MNF approached the house, shots were fired from it and a confrontation ensued for some 25 minutes. The MNF troops entered the house, handcuffed all residents and executed all of them. After the initial MNF intervention, a US air raid ensued that destroyed the house.

Iraqi TV stations broadcast from the scene and showed bodies of the victims (i.e. five children and four women) in the morgue of Tikrit. Autopsies carried out at the Tikrit Hospital's morgue revealed that all corpses were shot in the head and handcuffed.

I am aware that the MNF confirmed that an air raid took place that day in Balad and that it caused an unconfirmed number of casualties. The US military attacked the house to capture members of Mr. Faiz Harrat Al-Majma'ee's family on the basis that they were allegedly involved in the killing of two MNF soldiers who were killed between 6 to 11 March 2006 in the Al Haweeja area. The US military was further reported in the media as stating that MNF troops attacked the house in question to capture "a foreign fighter facilitator for the Al Qaeda in Iraq network". Other reports indicate that over the past five months, there have been a significant number of lethal incidents in which the MNF is alleged to have used excessive force to respond to perceived threats either at checkpoints or by using air bombing in civilian areas.

In drawing the attention of your Excellency's Government to this information and seeking clarification thereof, I am fully aware of the stance taken by your Government in correspondence with me regarding the mandate's competence regarding killings that are said to have occurred within the context of an armed conflict (I refer to your Government's letters dated 22 April 2003 and 8 April 2004).

As explained in my report to the 61st Commission on Human Rights, as well as in letters to your Excellency's Government of 26 August 2005 and 7 March 2006, however, not only the relevant formulation of the mandate but also the General Assembly in its resolutions and the now longstanding practice of the independent experts successively holding the mandate since its creation in 1982 make it clear that questions of humanitarian law fall squarely within the Special Rapporteur's mandate (See E/CN.4/2005/7, at par. 45).

I would also recall that the Human Rights Committee has held

that a State party can be held responsible for violations of rights under the Covenant where the violations are perpetrated by authorized agents of the State on foreign territory, "whether with the acquiescence of the Government of [the foreign State] or in opposition to it". (See Lopez v. Uruguay, communication No.52/1979, CCPR/C/OP/1 at 88 (1984), paras. 12.1-12.3.)

Finally, I wish to remind you that UN GA Resolution 59/191 of 10 March 2005, in its paragraph 1, stresses that "States must ensure that any measure to combat terrorism complies with their obligation under international law, in particular international human right, refugee and humanitarian law".

Without in any way wishing to pre-judge the accuracy of the information received, I would be grateful for a reply to the following questions:

1. Are the facts alleged in the above summary of the case accurate? On what basis was it decided to kill, rather than capture, members of Mr. Faiz Harrat Al-Majma'ee's family.
2. What rules of international law does your Excellency's Government consider to govern these incidents? If your Excellency's Government considers the incidents to have been governed by humanitarian law, please clarify which treaty instruments or customary norms are considered to apply.
3. What procedural safeguards, if any, were employed to ensure that these killings complied with international law?
4. Does your Excellency's Government intend to provide compensation to Mr. Faiz Harrat Al-Majma'ee's relatives.

It is my responsibility under the mandate provided to me by the Commission on Human Rights and reinforced by the appropriate resolutions of the General Assembly, to seek to clarify all such cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council I would be grateful for your cooperation and your observations. I undertake to ensure that your Government's response is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration,

Philip Alston
Special Rapporteur on extrajudicial, summary or arbitrary executions

End text of letter.

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